

{In Archive} Re: FW: Questions for the record from House Water and Power [Notes Link](#)

Tom Hagler to Nawi, David, Letty_Belin

Cc Karen Schwinn

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Hah! I am so much NOT the person you want doing this, given my overall views about the development and collapse of CALFED and the state of the BDCP.

I also know a trap when I see one.

Tell you what. I will do a straight up summary of what I think are the lessons and implications for BDCP, and you or whoever at DOI can pick and choose, or ignore it completely.

First, you probably know that there have been a number of reviews on the failure of CALFED, including:

(1) Official reviews, sponsored by the agencies themselves. These include the Little Hoover Commission evaluation of governance (*Still Important, Still Imperiled*, November 2005), two “audits” of the program by the California Department of Finance and KPMG. There were also some summary reviews of CALFED done in the Delta Vision process.

(2) Unofficial reviews, such as the commentary in the PPIC report (*Envisioning Futures for the Sacramento-San Joaquin Delta*, 2007).

(3) Academic Reviews. My favorite is David Owen’s “Law, Environmental Dynamism, Reliability: The Rise and Fall of CALFED,” 37 *Envtl. L.* 1145 (Fall 2007).

So my comments on those questions are necessarily influenced by all of these reviews.

Here are my lessons and the applicability to BDCP.

1. You Can't Promise Everybody Everything They Want

This lesson seems to be one of the most controversial, but it comes up again and again in the literature. For example:

“...[T]he CALFED agencies endangered their success by premising their response to the Bay-Delta's ills on the assumption that they could reliably increase both consumption and protection, and that through adaptation, ample funding, and managerial innovation they could finesse whatever conflicts arose.” - Owen, at p. 1208.

“...[A] change in thinking is necessary, particularly in terms of the ability to satisfy all goals simultaneously. The approach adopted by CALFED in the mid-1990's was that “everyone would get better together,” and it was assumed that this could be achieved by managing the Delta as a single unit, simultaneously achieving improvements in habitat, levees, water quality, and water supply reliability. Going forward, Californians will need to recognize that the Delta cannot be all things to all people. Tradeoffs are inevitable. The challenge will be to pursue an approach that yields the best outcomes overall, accompanied by strategies to reasonably compensate those who lose Delta services.” PPIC, at p. ix.

I honestly don't know what Interior wants to do with this “lesson”, which EPA certainly believes is correct. As you know, both the Governor and certain federal legislators continue to contend that we can continue to have everything for everyone. Interior also seems stuck in that mindset, continuing to promise (i.e., contract for) more than it can deliver in terms of water deliveries out of the Delta.

So do with that “lesson” what you will. It is an issue that will not go away.

2. Spending Programs Fail When the Funding Goes Away

The CALFED program adopted in August 2000 was basically a spending or investment program, where state and federal investments were proposed by the Clinton and Davis administrations. Once those administrations left office, much of the political willingness to spend the significant funds evaporated, and the program languished.

The “lesson” here for BDCP is that the program needs to have long term funding, either through “beneficiary pays” assessments, through state bonds, or through some other form of reliable federal funding.

3. Comprehensive Solutions Can Become Unmanageable

In theory, you want to have a comprehensive approach, so that more people will support the solution. In practice, CALFED became a lightning rod for every water related issue in the state. It became the water conservation plan for the state, the water infrastructure for the state, the water transfers reform effort for the state, the upper watershed restoration for the state, etc. At some point, that “comprehensive” approach became unwieldy.

The BDCP addresses this by narrowing its scope to, effectively, three issues: (1) Conveyance through or around the Delta; (2) the operations of the export facilities; and (3) recovery of endangered species. Although that is a huge effort, it is still more focused than the CALFED effort.

4. Consensus Cannot Be Defined as Unanimity

CALFED, by billing itself as a “consensus” effort, raised expectations that everyone would need to agree or at least acquiesce in all decisions. That was a recipe for paralysis. Most observers recognize that unanimity is not a reasonable expectation in California water policy.

BDCP addresses this by narrowing the range of decisionmakers. In the first instance, the decisionmakers are the applicants and the state and federal fish agencies, who must necessarily agree to the contents of the plan. Second, the BDCP must ultimately meet with the approval of other regulatory agencies and with legislative overseers. Again, this is a large set of actors, but it is smaller than, for example, the CALFED Bay Delta Advisory Committee.

5. Governance Reform is Complicated

The painful experience of the California Bay Delta Authority is a valuable lesson on how difficult it is to reform government institutions. This is especially true in the context of federalism, where both state and federal agencies have jurisdiction and interests.

Interior recognizes that the State of California has just enacted a sweeping reorganization of Delta governance at the state level, and pledges to work closely with the new state system to make it work.

Interior also believes that, given this massive change at the state level, the BDCP should not propose significant *additional* changes to governance in the BDCP process. The potential for bureaucratic paralysis is simply too great.

[NOTE: THIS IS OBVIOUSLY A POLICY PROPOSAL. DO WITH WHAT YOU WISH.]

6. Decisions, Not Planning Processes

Finally, one of the problems with the CALFED process is that, for all of its excellent work, the “product” was primarily a programmatic environmental document. Critical decisions were deferred, and regulatory decisions were not made.

The BDCP, on the other hand, if successful, will yield an actual regulatory decision under the state and federal endangered species acts. This decision must meet known standards (both statutory and judicial), and will enable real activities to take place. It is, in short, an action, rather than just “one more planning process.”